Accelerate ESG

An update on environmental, social and governance matters

Akin Gump
STRAUSS HAUER & FELD LLP

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2021: ESG On Center Stage

As we approach the end of a watershed year, we are struck by the rapid evolution and intensification of all things ESG (environmental, social and governance). Virtually every segment of the global economy has been impacted by ESG demands since the start of 2021. Companies previously seemingly removed from ESG pressures are adapting their short- and long-term business strategies, investment products are proliferating in volume and sophistication, and regulators the world over are hyper-focused on creating frameworks to address demands for reliable and credible ESG-related data and metrics. No doubt, 2021 will be remembered as the year ESG came here to stay. Indeed, we fully expect that stakeholder interest in ESG-centered products, disclosures and metrics will continue to drive markets, investments, financing business strategy and policy considerations over the course of 2022.

We share here our perspectives on some of the key developments in ESG this year, and offer some thinking on what global companies and investors might expect to see in 2022.

– Kerry Berchem, Amy Kennedy, Stacey Mitchell & Richard Rabin, Co-Leaders, ESG Practice

SPOTLIGHT ON

COP26 – What Did We Learn and What's Next?

Akin Gump's team covered all aspects of the recently concluded 26th meeting of the Conference of the Parties to the U.N. Framework Convention on Climate Change (UNFCCC) (COP26) and benefitted tremendously from having two of the firm's leaders on climate issues attend the meetings in person. As we recently wrote, the conference "may well become known as the 'Pledge and Commitment COP'. Governments, businesses, multilateral institutions and civil society focused their two weeks in Glasgow on how to 'get things done' to limit the planet's rising temperatures to 1.5°C from pre-industrial levels. The apparent solution: pledges and commitments. Now comes the hard work: adhering to these pledges and commitments, with clearly defined milestones, in a transparent and accountable manner to ensure environmental integrity." In our view, the five key takeaways from COP26 are as follows:

- Climate finance, including accountability and "loss and damage," figured prominently into COP26 negotiations.
- Parties agreed to rules for market and non-market mechanisms under Article 6 of the Paris Agreement.

- Transportation, including aviation and shipping, remains a key area of emphasis for mitigating emissions.
- Nature and biodiversity garnish significant attention, but operative provisions ultimately omitted from Glasgow Climate Pact.
- Notable new partnerships coming out of COP26 will drive climate action going forward.

READ MORE: COP26 – WHAT DID WE LEARN AND WHAT'S NEXT?

United States' Commitments, Partnerships and Initiatives at COP26 >

Five Takeaways from the UN Climate Change Conference >

COP26 and Article 6: Where Did Singapore End Up? >

Singapore: COP26 and Creating a Center for Carbon Trading >

Transport Day at COP26—Key Events >

From Climate to Conservation: Government and Private Sector Leaders >

Ambitious Coal Transition Pledge Not Fully Embraced at COP26 >

PODCASTS AND OTHER MEDIA

Accelerate ESG Podcast

We also are pleased to announce the launch of *Accelerate ESG*, a new podcast series that will feature in-depth conversations around global ESG issues. The inaugural Accelerate ESG podcast wraps-up of some of the key developments and resolutions emerging from the 2021 COP26 conference in Glasgow. The podcast features a conversation among climate change and sustainability law veteran and co-leader of the firm's climate change group Ken Markowitz, who attended COP26; Naboth van den Broek, a partner in the firm's London office who advises companies and governments on issues at the intersection of international law, policy, government and strategy (and who also attended COP26 with Mr. Markowitz); and partner Stacey Mitchell, who co-leads the firm's ESG group. Listen to the first edition here.

ESG: UNITED STATES

Attention on ESG issues in the United States continues to be heavily focused on climate-related concerns, including anticipated new rulemaking by the U.S. Securities and Exchange Commission (SEC). As we previously reported, SEC Chair Gensler has publicly indicated that the SEC is in the midst of an effort to develop a robust reporting framework for ESG matters. Chair Gensler's public statements confirm that the SEC's yet-to-be revealed approach will extend well beyond sustainability. Consistent with Gensler's statements and a bill recently reintroduced by congressional Democrats, future rule proposals will include extensive climate-related disclosures (which we discussed in a recent piece) and also are expected to require public companies to provide certain "human capital" disclosures. These disclosures could include, among other things, workforce metrics relating to diversity, turnover rate and a breakdown of the number of full and part-time employees. These initiatives are taking place as various sectors of the economy, and the energy industry in particular, continue to factor ESG considerations into both short- and long-term operations and generating sustainable returns for stakeholders.

As we noted in a recent Q&A published by Thomson Reuters, board diversity has been a prominent issue for investors (including activist investors) for the past decade or so. We have seen some profound steps taken by companies to diversify their boards. Notably, the importance of board diversification has been underscored by initiatives such as the recent SEC-approved Nasdaq Diversity Rule and the adoption by a handful of states and foreign jurisdictions of diversity requirements for boards of directors. Likewise, funds have expressed the expectation to see more women elected to boards of directors and some have stated that they will vote against nominee directors if a board is not committed to diversity. A key point our clients make is that when they talk about diversity, they do not embrace simplistic or symbolic gestures, but are really looking for diversity of experience — people who have different backgrounds and perspectives, in addition to demographic diversity.

During 2021, investors and other stakeholders have continued to insist that boards of directors and management take ESG principles into account as a component of a robust corporate governance framework at public and private companies alike. The SEC's recent approval of the Nasdaq Diversity Rule and issuance of new guidance governing shareholder proposals underscore the SEC's focus on the intersection of ESG and corporate governance. Relatedly, proxy advisory firms such as Institutional Shareholder Services (ISS) continue to be responsive to stakeholder demands by continuing to update proxy voting guidelines in a manner consistent with ESG goals such as increasing boardroom diversity.

Read more

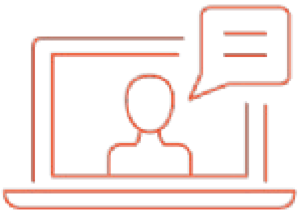
ESG: EU, UK AND ASIA

The European Union and United Kingdom continue to set the pace in terms of implementing tangible disclosure and other requirements to address ESG considerations. The European Commission continues to adopt and develop legislation to create a comprehensive ESG framework. These initiatives are focused on: tackling climate change and decarbonization (e.g., "Fit for 55" package); building on financial and non-financial disclosure and transparency through frameworks such as Sustainable Finance and Disclosure Regulation and Taxonomy Regulation; fostering sustainable finance (including a "European Green Bond Standard"), which sets out a framework for bonds to fund environmentally sustainable activities; and relating to enhanced due diligence on, and supply chain management of, adverse impacts on human rights, the environment and other social and governance factors (including proposing direct civil liability for failure to comply). Relatedly, the U.K., which is no longer a member of the EU, continues to undertake its own ESG-related rule-making initiatives and recently launched sustainability disclosure requirements for businesses and investors.

Generally speaking, ESG-related regulation in Asian jurisdictions lags behind the United States, EU and U.K. That having been said, there continues to be significant activity in Asia in relation to sustainable finance and the corresponding demand for reliable, verifiable data to support sustainable economic activity. With China, South Korea and Japan all having recently announced ambitious net zero targets, most stakeholders fully expect Asian demand for sustainable financial products to continue expanding at record levels; however, such stakeholders are demanding that regulators across various jurisdictions undertake regulatory initiatives to facilitate standardized reporting with respect to these metrics.

Read more

EVENTS



Recap

Wednesday, September 29, 2021
Webinar

On September 29, 2021, Akin Gump hosted its inaugural ESG Summit. Held virtually, the Summit brought together professionals from within and outside the firm to cover hot topics on all aspects of ESG and the evolving impact ESG is having on the global political economy. The five panels covered the following topics:

- International Framework for ESG Investment: Is Sustainable Investment Here to Stay?
  Recording and Program Materials
- ESG and Shareholder Activism: Preparing for the Next Campaign
  Recording and Program Materials
- Establishing and Implementing Climate Commitments: A Path to Net-Zero
  Recording and Program Materials
- The SEC's ESG Priorities: A Focus on Investment Funds
  Recording and Program Materials
- Update from Washington: Regulatory and Legislative Developments Impacting the ESG Ecosystem
  Recording and Program Materials

In the New Year

We also are pleased to announce that, by popular demand, in 2022, we will be holding a follow-up "breakout" session to enable interested parties to continue the conversation around these important topics. Details to follow.

AKIN GUMP'S ESG TEAM

Contact

Kerry E. Berchem
Partner

Amy Kennedy
Partner

Email
+1 212.872.1095

Email
+44 20.7012.9868

Stacey H. Mitchell
Partner
Email
+1 202.887.4338

Richard J. Rabin
Partner
Email
+1 212.872.1086

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